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ABSTRACT

This paper summarizes information concerning the impact of three pieces of federal legislation on the inclusion of students with disabilities in postsecondary programs, especially those supported by the TRIO program. The paper briefly describes major points of the following laws: (1) the Individuals with Disabilities Education Act (IDEA), which is the basic special education law for K-12; (2) the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability in employment; and (3) Section 504 of the Rehabilitation Act of 1973, which mandates equal access for students with disabilities at institutions with programs receiving federal aid. Specific ways in which TRIO programs can comply with and coordinate their efforts with these legal initiatives are noted, including educating parents regarding the rights of their children with disabilities, a careful distinction between guaranteeing equal access and guaranteeing student success (which is not required), provision of accommodations (such as sign language interpreters, note takers, extended time in testing), and general services (such as adapted housing and transportation). (Contains 11 references.) (DB)

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Understanding the Law To Give Students with Disabilities Full Potential

Three federal mandates have impact on students with disabilities within our educational system – and thus on students in TRIO projects. As more and more students with disabilities are served by TRIO programs, it becomes increasingly important for TRIO personnel to understand the implications of these statutes for students with disabilities and for our programs.

by Jane Jarrow

This reprint is the second in a series of Research Informing Practice Short Papers commissioned by the National TRIO Clearinghouse

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"Understanding the Law: To Give Students with Disabilities Full Potential" is the second paper in a continuing series of National TRIO Clearinghouse short papers that condense current research on topics relevant to TRIO and other educational opportunity programs. The purpose of the short papers is to provide a research framework for project practice. These Short Papers will be available as reprints and will be downloadable from the National TRIO Clearinghouse Website at www.trioprograms.org [Clearinghouse Publications].

Future topics include: TRIO Practitioner as Researcher, Welfare to Work and TRIO Clients, Retention of First Generation Students in Postsecondary Education, Results of a Descriptive Survey of Talent Search Middle School Projects, Technology and Upward Bound Projects, Retention of Males in Upward Bound, and a History of Veteran's Upward Bound.

The National TRIO Clearinghouse, an Adjunct ERIC Clearinghouse on Educational Opportunity affiliated with the ERIC Higher Education Clearing-house, collects and disseminates information, applied program materials, resources, and research related to TRIO Programs and TRIO students. Housed in the Center for the Study of Opportunity in Higher Education, Council for Opportunity in Education, the Clearing-house is funded by a grant from the United States Department of Education. For additional information about the Clearinghouse, contact:

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Understanding the Law

To Give Students with Disabilities Full Potential

BY JANE JARROW

Three federal mandates have impact on students with disabilities within our educational system – and thus on students in TRIO projects. As more and more students with disabilities are served by TRIO programs, it becomes increasingly important for TRIO personnel to under stand the implications of these statutes for students with disabilities and for our programs.

In some cases, a thorough knowledge of the law may help TRIO personnel in advising students with disabilities and their parents regarding their rights under the law. In some cases, the rules have more to do with obligations of the TRIO program and/or their institutional affiliate for support and service to this population. In all cases, knowledge and understanding of these legal mandates can help to foster understanding, inclusion, and consideration of a population of students traditionally underrepresented in postsecondary education

IDEA - The "Special Education" Law

The Individuals with Disabilities Education Act (IDEA) is the primary law that governs treatment of students with disabilities in the K-12 system. Originally implemented in 1975 as the Education of All Handicapped Children Act (also known as P.L. 94-142), IDEA covers children from age 3 1/2 to age 21 or graduation from high school, whichever comes first. IDEA is a funding statute. It requires action from school districts who wish to receive any federal funding (all public schools would be included) and it provides funding formulas to assist with the costs associated with these legal requirements.

Essentially, IDEA requires that the school district seek out children within the given age range living within their catchment area. The schools are then required to provide a free, appropriate, public education in the least restrictive environment. In the 20+ years since the statute was implemented, we have seen dramatic shifts in both the practice of, and the population served under, the law. In the 1970's, we spoke of "mainstreaming" students. Today, you are more likely to hear about "inclusion" of students with disabilities.

There are several major points that may be helpful to TRIO personnel in understanding the impact of IDEA for students with disabilities:

- While IDEA is a federal statute, there is considerable leeway given within the law as to the specifics of classification, how school districts are to gather and report information, and even how certain elements are to be implemented. Thus, there may be considerable differences in how IDEA is practiced in different states. The goal is the same, but the implementation is not.
- An Individual Education Plan (IEP) must be developed by the school district for every student enrolled for special educational services. This IEP is to be developed as a result of a multifactored assessment of the impact of the disability on the child's educational functioning and future. The IEP must be approved by both parents and school authorities, and must be reviewed and updated regularly.
- Under the law, nothing can be done for, to, or with a student with a disability without the permission of the parent/guardian. Parents are an integral part of the decision-making process regarding special placement, services, and so on for their children with disabilities. Unfortunately, the law does not require that parents be educated as to the options available for their

children, or the implications of various decisions. Parents must be informed of their right to be involved in the process, and their right to refuse the recommendations of the school district. But, too often, parents of first generation, low-income students have neither the education nor the wherewithal to question the pronouncements of school personnel.

- Students are classified as having a disability for purposes of IDEA on the basis of whether or not they have a disability that requires intervention/support in order to receive a free, appropriate, public education. In other words, the question of disability is specifically focused on educational pursuits. Thus, children whose disabilities are very real but are not significantly impacting on their academic performance may not qualify for special education services under IDEA. That is why we sometimes see students at the secondary or postsecondary level that will report that they "used to be learning disabled." That probably means that their learning disability was severe enough to have been noticed and diagnosed at some time in the past. Such students received special educational services until such a time as they were coping so well that they no longer needed assistance to be performing comfortably in comparison to the age-equivalent or grade-equivalent peers. They still have the disability, but they have been found to no longer need different or supplemented instruction in order to function.
- The focus of IDEA is on the individual child with a disability. The plans that are made and the educational program that is developed are specific to the needs of the individual child and the goals for that child. By federal law, the IEP must include a transition goal - usually to the world of work or to postsecondary education.

TRIO personnel who have contact with students in the K-12 system need to understand the rules under which students with disabilities are identified and served. The tracking of such students into non-college preparatory programs may impact dramatically on their ability to pursue higher education. The perception of students enrolled in special educational programming by school personnel may also impact on the referrals made to Talent Search, Upward Bound, and Math/Science Upward Bound programs by teachers and counselors. **If the school views students with disabilities as facing insurmountable educational hurdles that preclude them from postsecondary study, then those students may be deprived of the opportunity to try (or even to consider) their options in this regard.**

TRIO programs may also play a role in educating parents regarding the rights of their children with disabilities to service and support within the system. TRIO program personnel cannot advocate with the school district directly on behalf of a student with a disability; that role belongs to the parent. But TRIO personnel can supply information, suggest direction, and even rehearse parents in how best to fulfill this critical role.

Section 504 - Civil Rights for People with Disabilities

In 1973, Congress passed the Rehabilitation Act of 1973. The Rehabilitation Act is the act under which the Vocational Rehabilitation system in this country is funded. With the Reauthorization in 1973, Congress included a Title V, with its accompanying sections. For our discussion, the important part of this statute is Section 504, which can be stated in this way as applied to education:

> *"No otherwise qualified person with a disability... shall, solely on the basis of disability, be denied access to, or the benefits of, or be subjected to discrimination under, any program or activity provided by any entity/institution that receives Federal financial assistance."*

In essence, Section 504 mandates that any educational entity that receives money from the federal government may not discriminate on the basis of disability. Case law and subsequent congressional action have clarified the sweeping scope of this statement. If an institution of higher education has a single student going to school using federal financial aid, the entire institution is considered to be a recipient of federal funds and is subject to the statute. The wording of the statement is identical to that of other federal nondiscrimination statutes. Section 504 was hailed widely as the first civil rights statute for persons with disabilities in this country.

Subpart C of Section 504 applies to elementary education. Subpart D of Section 504 applies to secondary schools. Both provide rules/regulations that prohibit discrimination against students with disabilities in these settings. But nondiscrimination, requiring that students not be treated differently and that they be given equal opportunity, is not the same as special education that requires that more is done (and done differently), for students with disabilities. For this reason, Subparts C and D of Section 504 are considered secondary to the application of IDEA for children in the K-12 system. IDEA is considered the "legislation of choice" in mandating treatment for this population since it typically requires that more be done for these students that would be required under Section 504. *However*, if a student is not seen as educationally limited by his/her disability, but has a disability that would interfere with other opportunities, then a Section 504 plan is in order instead of the IEP. For example, a student who is a wheelchair user but requires no special classroom or instructional adjustments may still need a 504 plan to assure the availability of adapted transportation or physical therapy services.

In contrast, coverage under IDEA culminates with graduation from high school and thus does not have bearing on the treatment of students with disabilities in higher education. Subpart E of Section 504 is devoted to the implementation of this nondiscrimination mandate in postsecondary education. There are specific regulations governing the manner in which equal opportunity should be fostered or assured in the areas of admissions, appropriate academic adjustments, counseling, advising, athletics, and career planning.

The focus of Section 504, and of Subpart E, is on equal access to the program for all individuals, regardless of

disability, rather than being on specifically defined opportunities for a single student with a disability. While IDEA may or may not be important to TRIO personnel, depending upon the population served, Section 504 is pertinent to ALL TRIO programs and personnel because of their federal funding source. Regardless of the age, level of educational achievement, or population of students served in your TRIO program, the project itself is bound by the rules of Section 504 and may not exclude any student from participation solely on the basis of disability.

ADA - The Americans with Disabilities Act of 1990

In 1990, Congress passed the Americans with Disabilities Act (ADA). Title I of the ADA prohibits discrimination on the basis of disability in Employment. Title II prohibits entities funded by state or local government from discrimination on the basis of disability. Title III of the ADA prohibits discrimination by privately funded entities that offer their goods, programs, or services to the public. Title IV of the ADA is specifically targeted to assuring access to telephone and communication systems. The status of coverage under this law is very different than that of Section 504 (which simply states that if you receive money from the federal government, you are included). But neither the intent of the law nor its implementation regarding TRIO programs would be dramatically different than what has been—and continues to be—required under Section 504. In regard to programmatic access, the ADA could be considered to be "504+." It requires all the same things required under Section 504, with a few new pieces added. For example, Section 504 was implemented long before we knew about AIDS and HIV. The ADA contains more specific reference to people with disabilities caused by problems with the immune system, thus clearly bringing this population under the protection of the law.

Section 504 includes specific details as to what it would mean not to discriminate on the basis of disability in various educational settings (Subparts C, D, and E as explained above). There is nothing so specific in the ADA. Although there is reference to coverage of educational entities in both Titles II and III of the ADA, the law contains no details regarding implementation in these settings. This may be, in part, because the feeling was that the stage had been set for implementation in such settings by 20+ years of obligation under Section 504. In framing the ADA, lawmakers were careful to use the same terminology, with the same definitions, as had been used in that earlier federal statute (e.g., "An individual with a disability is someone who (description)…as has been used in Section 504 of the Rehabilitation Act of 1973"). By so doing, they made years of case law and precedents regarding Section 504 immediately applicable to the ADA.

The focus of Section 504 and the ADA is on equal opportunity—not on success. It is hoped that all students will be successful in their academic pursuits. Indeed, the focus of TRIO programming is the successful completion of a postsecondary program.

As in Section 504, protection under the ADA is offered to the individual with a disability *through the actions* of the entities that are accessed by that person. The focus is on equal access to the opportunities provided to all, rather than on additional support or service provided to the person with a disability. Coverage of TRIO programs under the ADA will be determined on the basis of coverage of their sponsoring entity. Programs sponsored by public educational institutions/entities would be covered under Title II of the ADA; those TRIO programs sponsored by private institutions would, with rare exception, be covered until Title III of the ADA.

But coverage (or lack of coverage) under the ADA is really a moot point for TRIO programs. Section 504 is still in place and continues to be rigorously enforced for entities receiving funding from the federal government. In our case, Section 504 becomes the "legislation of choice" between the civil rights statutes promising protection to people with disabilities because it offers many more specifics as to how it is to be applied and implemented. The impact of the ADA on higher education and TRIO programming is not that it requires programs to do much more than has long be required under Section 504. Rather, the impact of the ADA is that more and more students with disabilities are aware of the fact that they have protection from discrimination or exclusion under the law.

What Is Required of Institutions of Higher Education Under Section 504/ADA?

Before beginning a discussion of what Section 504 and the ADA require of institutions, it is appropriate to discuss what the laws do not encompass. Both Section 504 and the ADA are viewed as civil rights statutes. They are not funding statutes. They do not provide any funding from the federal government to help support the activities and actions they require. Section 504 says, "If you want to do business with the federal government, you will abide by our rules." The ADA simply says, "it is illegal not to comply!" It is important to recognize the basic emphasis on civil rights—equal access—because this focus on equal opportunity (rather than enhanced support/service) is critical to determining what is/is not required of institutions under the law.

The focus of Section 504 and the ADA is on equal opportunity—**not** on success. It is hoped that all students will be successful in their academic pursuits. Indeed, the focus of TRIO programming is the successful completion of a postsecondary program. But the focus of the federal mandates is on making sure that students have the same chance to show whether or not they can be successful, rather than enhancing the likelihood of success. This puts TRIO programs work-

ing with students with disabilities in a delicate position. If the program is providing 504/ADA mandated services to these students in addition to traditional TRIO services of tutoring, counseling, study skills instruction, and so on, it is vital that there be clear distinction made between these separate activities with different goals.

The minute faculty/administrators/students begin to blur the lines, there are difficulties ahead. It calls into question the whole concept of accommodation for equal access. Faculty understand that tutoring is provided to help students to be successful academically. If the same office that provides tutoring also recommends double-time for taking tests, there is the danger that this, too, will be perceived as an attempt to enhance success. Accommodations are provided because a student would not have equal access without it. Academic support services (tutoring, counseling, and so on) are provided to enhance the likelihood of success. Don't confuse the two - and don't let anyone else confuse them either!

What services are required for equal access under the law? Section 101.44 of the Section 504 regulations is titled "Appropriate Academic Adjustments." Within that regulation there are some specific things included and excluded as institutional responsibility. Assuming appropriate documentation of need has been provided, the following accommodations generally are considered to be necessary for support of students with disabilities in classroom/testing situations:

- Provision of sign language interpreters, readers, and/or scribes
- Provision of materials in alternate media (textbooks on tape, Braille, and so on)
- Notetakers
- Use of tape recorders, adaptive listening systems, and other technology
- Allowing the presence of service animals
- Extended time in testing
- Use of adaptive equipment in testing (calculators, word processors, and so on)
- Quiet (proctored) setting for testing

In addition, activities necessary to allow the full participation of students with disabilities in all phases of institutional life must be pursued:

- Adapted housing (residence hall facilities adapted for use by students with disabilities)
- Adapted transportation (lift-equipped transportation, as necessary, for institutionally sponsored programs and activities in which transportation is provided to others)
- Reassigning of classes to accessible classroom space
- Allowing the presence and use of service animals
- Removal of architectural barriers

Tutoring is NOT a required service under Section 504 and the ADA, even if the student with a disability will not survive academically without it. This need for tutoring is seen as a function of the student's preparation/ability to handle college level work, not as a function of disability. As such, it is not required that the service be provided under 504/ADA.

These laws only focus on equal access, not success!

There are some activities that are clearly excluded from institutional responsibility. The institution is not required to provide services or equipment of a personal nature. This includes providing readers for personal study/use, equipment such as wheelchairs or hearing aids, specially fitted to the needs of the user, or personal care attendants. It is under this caveat that the provision of tutoring has been ruled to exceed the responsibility of the law. Tutoring is NOT a required service under Section 504 and the ADA, even if the student with a disability will not survive academically without it. This need for tutoring is seen as a function of the student's preparation/ability to handle college level work, not as a function of disability. As such, it is not required that the service be provided under 504/ADA. *These laws only focus on equal access, not success!* If tutoring is provided to all students on campus, it must be available equally to students with disabilities. If study skills training is available to all students on campus, it must be available equally to students with disabilities. But if such academic support services are not readily available to the campus population as a whole, students with disabilities have no legal right to demand that they be provided to them. Thus, one role of TRIO programs in the support of students with disabilities in higher education is to provide the same academic enhancement activities provided to other disadvantaged students, in hopes of fostering their academic success.

There are other responsibilities for institutions of higher education under 504/ADA that can best be summed up under the heading of "institutional involvement." Institutions must foster faculty cooperation in carrying out these federal mandates, and that often means conducting inservice training activities. There must be administrative support for the delivery of necessary services; this would include everything from the establishment of comprehensive policies/procedures at the institutional level, to the delineation of an appropriate grievance mechanism, to assuring that these services are adequately funded to assure compliance. And there must be clear understanding of the institution-wide responsibility for compliance. The institution is ultimately responsible for assuring that individuals with disabilities do not suffer discrimination as a result of that disability. Every faculty member, staff person, and administrator bears some of that responsibility on behalf of the institution.

It is important for TRIO personnel (especially those working in SSS and McNair programs) to understand that the obligations for equal access under Section 504 and the ADA are *institutional obligations*, not specifically or exclusively TRIO obligations. While the presence of your federally funded program may require the institution to be in compliance, it is not appropriate for the burden of compliance to be shifted exclusively to the TRIO program. A clear understanding of the legal mandates may assist your students with disabilities in achieving their full potential through the removal of artificial barriers to their success. It may also influence decisions you make regarding the inclusion of students with disabilities within your program/activities. But the TRIO program is a part of the institution, not a substitute for institutional commitment. Do your part, but help the institution to understand its responsibility to this segment of your project population.

References

IDEA - Individuals with Disabilities Education Act (last amended, 1997) PL 105-17

Rehabilitation Act of 1973 (last amended, 1998) PL 93-112

Americans with Disabilities Act of 1990 PL 101-336

For More Information

The text of the IDEA can be found at http://www4.law.cornell.edu/uscode/20ch33.html

The text of the Rehabilitation Act of 1973 can be found at http://www.nfb.org/rehabact.htm

The text of the Americans with Disabilities Act can be found at http://janweb.icdi.wvu.edu/kinder/pages/ada_statute.htm

"ADA Q & A: Section 504 and Postsecondary Education" by Deborah Leuchovius http://www.pacer.org/pride/504.htm

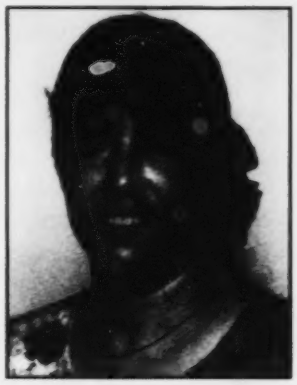
"Auxiliary Aids and Services for Postsecondary Students with Disabilities: Higher Education's Obligation Under Section 504 and the ADA" from the Office for Civil Rights, Department of Education http://www.ed.gov/offices/OCR/auxaids.html.

"Overview of ADA, IDEA,and Section 504" by Kelly Henderson http://www.kidsource.com/kidsource/content3/ada.idea.html#Americans

"Section 504 and IDEA: Basic Similarities and Differences" by James Rosenfeld (http://www.wrightslaw.com/advoc/articles/504_IDEA_Rosenfeld.html)

Summary and explanation of IDEA '97 from the Department of Education

http://www.ed.gov/offices/OSERS/IDEA/index.html



Jane Jarrow, Ph.D., has recently assumed a half-time position as Director of Disability Policy and Education for the Council. She is the President of her own consulting firm, Disability Access Information and Support. In that capacity, she provides inservice education, technical assistance, and resource information and materials to campuses across the country on a wide variety of issues regarding the implementation of legal mandates for educational opportunity for students with disabilities. Before assuming this role, Jarrow was the Executive Director of the Association on Higher Education and Disability for more than 13 years. During that time, she directed more than 20 TRIO training grants, sponsored by the Department of Education, that provided critical information regarding service and support to students with disabilities in TRIO.

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